



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,645	03/14/2001	William Clune	05918-213001 / 4080	2481

7590

07/09/2002

DANIEL J. SEPAKIK
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804

EXAMINER

BRITTAIN, JAMES R

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 07/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/808,645

Applicant(s)

CLUNE, WILLIAM

Examiner

James R. Brittain

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-9, 11-15 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-4, 10, 16-18 and 27-75 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION***Priority***

If applicant desires priority under 35 U.S.C. 119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. _____" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

If the application is a utility or plant application filed on or after November 29, 2000, any claim for priority must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2) and (a)(5). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) a surcharge under 37 CFR 1.17(t), and (2) a statement that the entire delay

Art Unit: 3677

between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional. The petition should be directed to the Office of Petitions, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231.

Election/Restrictions

Applicant's election without traverse of the method for forming a fastener further directed to Group I comprising figures 1B-1F, 3D and 7A in Paper No. 6 is acknowledged.

Claims 1-4, 10, 16-18, and 27-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-9, 11-15 and 19-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "the fastener product" (claim 5, line 8) lacks clear antecedent basis. The use of "claims" (claim 14, line 1) to describe the dependence renders the claim indefinite because it is unclear if the claim has some further dependence other than on

Art Unit: 3677

claim 5. It is assumed that the claim depends from claim 5 alone. The remaining claims are indefinite because they depend from indefinite claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354).

Hilston et al. (figures 2, 3) teach a method of forming a fastener comprising forming a continuous sheet-form base having a fastener 44a extending therefrom, the base further having non-planar undulations 46 in which the base extends out of its plane to form a peak that extends along a longitudinal direction of the base with opposite major surfaces of the base remaining generally parallel, the undulation 46 being elastically deformable to enable the base to stretch laterally upon application of a lateral tensile force to the fastener product. The corrugations 46 may be formed during the molding or stamping of the belt or in other conventional manners (page 6, lines 23-25). The difference is that it isn't stated that there are a multiplicity of fastener elements formed by molding with the sheet-form base. However, Suenaga et al. (figures 20-22; col. 10, lines 1-24) teach that it is desirable to form a molded elastic fastener tape 1 with a multiplicity of fastener elements 4 formed by molding with the sheet-form base and molded integrally with an elastic portion so that there is greater freedom of securement

Art Unit: 3677

and adjustment of the diaper. It would have been obvious to modify the method of forming a fastener taught by Hilston et al. so that there are a multiplicity of fastener elements formed by molding with the sheet-form base in view of Suenaga et al. teaching that it is desirable to form a molded elastic fastener tape 1 with a multiplicity of fastener elements 4 formed by molding with the sheet-form base and molded integrally with an elastic portion so that there is greater freedom of securement and adjustment of the diaper. As to claim 14, note that Suenaga et al. suggest the use of polyamide for the fastener section 3 (col. 10, lines 19-24).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354) as applied to claim 6 above, and further in view of Roe et al. (US 5554145).

Further modification of the method of making the fastener of Hilston et al. such that the undulation is formed by a mating groove and channel of a pair of rollers defining a nip in which the base is formed would have been obvious in view of Roe et al. (figures 4, 12, 20-22) which suggests the use of rollers 502, 504 to impart the undulations to the base as being an expedient manner to create undulations.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354) as applied to claim 5 above, and further in view of Anspach (FR 2750319).

Further modification of the method of making the fastener of Hilston et al. such that there is a flap for joining the fastener assembly to an article would have been obvious in view of Anspach (figures 2, 3) who suggests the use a flap 8 to secure the

Art Unit: 3677

fastener assembly to an article as being a desirable method of providing a secure fastening.

Allowable Subject Matter

Claims 11-13 and 19-26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

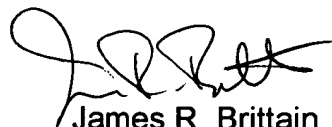
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hilston et al. (US 6221483) teach pertinent fastener structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Art Unit: 3677

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain
Primary Examiner
Art Unit 3677

JRB
July 1, 2002